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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,351	06/30/2003	Thomas Kelley		8163

7590
Thomas F. Kelley
2204 W. Monterey Ave.
Mesa, AZ 85202

08/30/2007

EXAMINER

GREEN, ANTHONY J

ART UNIT	PAPER NUMBER
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1755

MAIL DATE	DELIVERY MODE
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08/30/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/609,351

Applicant(s)

KELLEY ET AL.

Examiner

Anthony J. Green

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 14-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group I, claims 1-13 in the reply filed on 26 June 2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-13 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the use of specific amounts of components, does not reasonably provide enablement for the use of any and all amounts of components. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims.

Applicant recites in the specification that specific amounts of components are utilized in order to produce the desired results and accordingly these amounts should appear in the independent claim.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 5-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 5 the phrase "said effective amount of one or more acids are selected from the group consisting of" is confusing as it is unclear as to how the recited acids are an effective amount. That is, it appears that applicant is trying to say that the effective amount is one of the selected acids which is clearly not the case. It appears that the claim should recite "said one or more acids are selected from the group consisting of" so that no confusion exists.

In claim 8 the phrase "said effective amount of one or more acids is glycolic acid" is confusing as it is unclear as to how the recited acid is an effective amount. That is, it appears that applicant is trying to say that the effective amount is one of the selected acids which is clearly not the case. It appears that the claim should recite "said one or more acids is glycolic acid" so that no confusion exists.

In claim 11 the phrase "the addition of one or more" lacks proper antecedent basis. Also the claim is confusing as written as it is unclear as to what applicant is trying to claim. The claim is confusing as it is unclear as to whether or not the component is supposed to be optional or whether it is a required component of the claim.

In claim 13 the phrase "the addition of one or more" lacks proper antecedent basis. Also the claim is confusing as written as it is unclear as to what applicant is trying to claim.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frankenbach et al (US Patent No. 6,495,058 B1).

The reference teaches, in column 3, lines 29+, a wrinkle control composition comprising (A) Aqueous base comprising water which can be deionized, distilled or tap water. The level of water in the composition can be as high as about 100% of the composition, but is preferably lower than about 100%, more preferably lower than about 99.975%, even more preferably lower than about 99.9%, still more preferably lower than about 99.5%, and higher than about 40%, preferably higher than about 50%, more preferably higher than about 60%, even more preferably higher than about 70%, still more preferably higher than about 75% by weight of the usage composition. The composition may optionally comprise: (B) optionally, to reduce surface tension, an effective amount of surfactant; (C) optionally, a solvent and/or plasticizer; (D) optionally, but preferably, an effective amount to absorb malodor, of an odor control agent; (E)

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optionally, to enhance wrinkle control and other fabric benefits, an effective amount of fabric care polysaccharide chosen from the group of primary fabric care polysaccharide, adjunct fabric care oligosacchride, and starch; (F) optionally, but preferably, an effective amount to provide olfactory effects of perfume; (G) optionally, an effective amount, to kill, or reduce the growth of microbes, of antimicrobial active; (H) optionally, an effective amount to provide improved antimicrobial action for, e.g., the antimicrobial active, of aminocarboxylate chelator; (I) optionally, an effective amount of solubilized, water-soluble, antimicrobial preservative, especially when said antimicrobial active is not sufficient to act as a preservative; (J) optionally, other ingredients such as adjunct odor-controlling materials, chelating agents, additional antistatic agents if more static control is desired, insect and moth repelling agents, colorants, viscosity control agents; anti-clogging agents; agents for pH adjustment; buffers; whiteness preservative; and (K) mixtures of optional components (A) through (J). Column 7, lines 6+ teach that the surfactants may be present in the amount of at least about 0.0001% to less than 20% and column 9, lines 66+ teach that the surfactant may be ionic and may be selected from various straight chain primary alcohol ethoxylates. Column 13, lines 1+ teach that various alcohols may be utilized which include methanol, ethanol, isopropanol etc. and may be added in an amount of at least about 0.5% to less than 15%. Column 28, lines 35+ teach that a perfume may be added to provide a freshness impression to the treated fabrics and that the perfume may be selected from various water soluble perfumes (see column 29, lines 34+). Column 40, lines 24+, teach that a pH control agent may be added to provide a desired pH of below about 7 or above about 7 and

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may be selected from various acids such as mineral acids and organic acids. To prevent irritation the pH should be above about 3 to below about 12. Column 38, line 60+ teaches that an optional antistatic agent may be added which includes various quaternary ammonium compounds and the amount is from 0.05% to about 10% (see column 39, lines 36-39).

The instant claims are obvious over the reference. While the reference does not provide an example wherein all of the components it does provide the motivation for one to be produced as according to the reference many of the components are optional components. It should be noted that "A reference can be used for all it realistically teaches and is not limited to the disclosures in its specific examples". See *In re Van Marter et al* 144 USPQ 421; *In re Windmer et al* 147 USPQ 518, 523; and *In re Chapman et al* 148 USPQ 711. As for the amounts of the components while the reference does not teach the same amounts it does teach amounts that encompass those instantly claimed. However, one of ordinary skill in the art at the time the invention was made would have considered the invention to have been obvious because the compositional proportions taught by the reference overlap the instantly claimed proportions and therefore are considered to establish a prima facie case of obviousness. It would have been obvious to one of ordinary skill in the art to select any portion of the disclosed ranges including the instantly claimed ranges from the ranges disclosed in the prior art reference, particularly in view of the fact that;

"The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of

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percentages", In re Peterson 65 USPQ2d 1379 (CAFC 2003).

Also, In re Geisler 43 USPQ2d 1365 (Fed. Cir. 1997); In re Woodruff, 16 USPQ2d 1934 (CCPA 1976); In re Malagari, 182 USPQ 549, 553 (CCPA 1974) and MPEP 2144.05.

As for the types and amounts of the acids the reference teaches that the acid may be selected from organic acids and mineral acids and that the pH should be adjusted to be between 3 and 12 therefore applicants particularly claimed amounts (i.e. an effective amount) and types are rendered obvious by the reference.

References Cited By The Examiner


8. The remaining references have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the above rejections.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony J. Green whose telephone number is 571-272-1367. The examiner can normally be reached on Monday-Thursday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Anthony J. Green
Primary Examiner
Art Unit 1755

ajg
August 27, 2007